Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Part 90 Rules	)	WT Docket No. 06-49
In the 904-909.75 and 919.75-928 MHz Bands	)	

To: The Commission

REPLY COMMENTS
OF
FCR, INC.

FCR, Inc., ("FCR") an LMS licensee, hereby submits its Reply Comments in the above-referenced proceeding. This rulemaking affords the prospect of giving licensees the flexibility they need to develop state-of-the art systems to meet a host of consumer and public safety needs. FCR is currently developing plans for advanced uses of the band and supports the Progeny LMS, LLC overlay network concept.[1] The success and viability of these plans is highly contingent on updating M-LMS rules to promote service flexibility, maintain current output power levels, and create safe harbor provisions for M-LMS licensees that represent a two-way street with regard to protections afforded to new unlicensed operations. Contrary to the assertion of those commenters who have stated that Progeny is the only M-

[1] *See* Progeny LMS, LLC, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006)(*Progeny Comments*).

LMS licensee who seeks updated M-LMS rules,[2] FCR fully supports the FCC's initiative to modernize the M-LMS regulatory scheme.

The Commission Would Serve the Public Interest by Creating a Flexibility Regulatory Scheme for M-LMS Licensees

As documented in FCR's initial comment filing, the technical environment and the economic market for location services has changed dramatically since the Commission fashioned the current M-LMS rules.[3] The near ubiquitous availability of GPS-enabled devices and the mandatory deployment of Enhanced 911 location capabilities in Commercial Mobile Radio Service (CMRS) devices, coupled with the lack of viable M-LMS equipment, has made deployment of a new M-LMS system virtually impossible from both a technical and commercial standpoint.[4] This technical and economic reality warrants service flexibility for M-LMS licensees. Granting M-LMS license as service flexibility advances the public interest by allowing deployment of alternative wireless communication services more directly when enabling public safety wireless applications.

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[2] *See* Cellnet Technology, Inc., *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006), p 2. New America Foundation, et. al, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006), p 7. Telesaurus Holdings GB LLC, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Amended Comments, WT Docket 06-49 (rel. 2006).

[3] *See* FCR, Inc., *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006).

[4] *Id.*

The Commission notes in the Notice of Proposed Rulemaking (NPRM) that its "goal [is] to provide rules that promote license flexibility while protecting other users."[5] The technology exists today that will enable the Commission to meet this goal.[6] The Progeny comment filing demonstrates how the use of advanced engineering and commercially available equipment allow for full shared use of the 902-928 MHz band without impacting current users in the band.[7] Thus, FCR believes the Commission can adopt a flexible regulatory scheme without violating its own directive to promote greater sharing without impacting current users in the band. A flexible regulatory scheme also would allow the Commission to serve the public interest by enabling M-LMS licensees to offer advanced services in the public safety and commercial wireless markets. For these reasons, the Commission should grant licensees greater flexibility to operate in the 902-928 MHz band.[8]

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[5] *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz bands*, Notice of Proposed Rulemaking, WT Docket 06-49, Rel. March 7, 2006 (*NPRM*), ¶ 18.

[6] *See* Progeny Comments at 25-27.

[7] *See* Progeny Comments.

[8] Many commenters urge the Commission not to grant M-LMS service flexibility as that will increase interference to Part 15 unlicensed devices. *See* Part 15 Coalition, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006), p 6. New America Foundation, et al., *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006), p 13. Cellnet Technology, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006). *See* Motorola, *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT

The Commission Should Maintain Current Output Power Levels to Protect the Unlicensed Users in the Band

FCR strongly supports maintaining the current power levels within the existing rules to best protect current users in the band. As the Progeny comments have demonstrated, an M-LMS system operating at 30 Watts ERP will cause negligible interference to Part 15 devices operating in the 902-928 MHz band when employing advanced interference mitigation technology.[9] FCR also agrees with Progeny's filing that reducing the output power will have no effect on the geographic area of interference, since the reduction in power will result in a compensating increase in the number of transmitters required to cover the same area.[10] Thus, a reduction in power to 6.1 Watts ERP will not achieve a better interference paradigm.[11]

Docket 06-49 (rel. 2006), p. 5. As Progeny's technical analysis shows, using commercially available interference mitigating technologies will cause no more interference than Part 15 devices already experience. *Progeny Comments* at 21.

[9] *Id* at 25-27.

[10] *Id* at 24.

[11] One commenter asserts that higher power automatically equates with higher interference potential. *See* Itron, Inc., *Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Comment, WT Docket 06-49 (rel. 2006), p.7. FCR points to Progeny's technical analysis to rebut that assertion.

Without a corresponding interference reduction benefit, lowering the power limit only imposes additional costs on M-LMS licensees.[12] FCR understands the interference concerns of unlicensed users in the band. However, the use of advanced technology and engineering principles best limits the amount of interference that unlicensed devices will experience.[13] Maintaining the current output power would protect unlicensed users from new interference and provides incentives to all users to deploy efficient and effective wireless capabilities in the 902-928 MHz band.

The Commission Should Implement a More Balanced Approach Between Unlicensed and Licensed Users in the Band

The Commission should extend the Part 15 safe harbor provisions to licensed users, as well. FCR does not oppose maintaining the safe harbor provisions for unlicensed users, but it believes that the Commission should also extend this safe harbor to M-LMS licensees. The testing condition imposed solely on licensees should be replaced with a set of technical parameters to which M-LMS licensees must adhere. Extending safe harbor protection to licensees based on these technical parameters would provide a more equitable balance between unlicensed and licensed users in the band. The resulting regulatory certainty would also afford M-LMS licensees a better chance of attracting investment from capital markets to finance

[12] A lower output power level will require additional infrastructure(i.e. more transmitters) to serve a geographic area which will increase the cost of deployment and ongoing operations. *See* Progeny Comments at 24.

deployment and operations of an advanced systems and would give technology companies greater incentive to create new and innovative products for the licensees.

Conclusion

The Commission can best balance the competing demands for innovative services and a desire for protection of existing users by adopting a flexible regulatory scheme that promotes the use of advanced, spectrum-efficient technology. Adoption of a flexible regulatory scheme would facilitate the ability of M-LMS licensees to deploy services in the band, while maintaining current output levels and creating incentives for both licensed and unlicensed users to maximize spectrum efficiency. FCR supports the Commission's continuing efforts to encourage more efficient use of the 902-928 MHz band.

Respectfully submitted,

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[13] *See* Progeny Comments at 25-27.

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